

**JOINT APPENDIX**

Supreme Court, U. S.  
**FILED**

**JUL 29 1976**

**MICHAEL RODAK, JR., CLERK**

**In the Supreme Court of the United States**

**OCTOBER TERM, 1976**

**Nos. 75-1261 & 75-1355**

**EARL BUTZ, SECRETARY OF AGRICULTURE,**  
*Appellant*

**v.**

**KAREN HEIN, ET AL.,**

**AND**

**KEVIN J. BURNS, COMMISSIONER OF THE DEPARTMENT OF  
SOCIAL SERVICES OF THE STATE OF IOWA, ET AL.,**  
*Appellants*

**v.**

**KAREN HEIN, ET AL.**

**ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA**

**JURISDICTIONAL STATEMENTS FILED**

**MARCH 5, 1976 AND MARCH 22, 1976**

**PROBABLE JURISDICTION NOTED JUNE 1, 1976**

IN THE  
**Supreme Court of the United States**

OCTOBER TERM, 1976

Nos. 75-1261 & 75-1355

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EARL BUTZ, SECRETARY OF AGRICULTURE,  
v. *Appellant*

KAREN HEIN, ET AL.,

AND

KEVIN J. BURNS, COMMISSIONER OF THE DEPARTMENT OF  
SOCIAL SERVICES OF THE STATE OF IOWA, ET AL.,  
v. *Appellants*

KAREN HEIN, ET AL.

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ON APPEAL FROM THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

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## RELEVANT DOCKET ENTRIES

DATE	PROCEEDINGS
1973	
Oct. 19	Filed Pltf's. Motion to Proceed in Forma Pau- peris.
Oct. 19	Filed Affidavit of Karen Hein.
Oct. 19	Filed Affidavit of Karen Hein Re: Poverty Status.
Oct. 24	Filed Order; Ordered that Karen Hein granted leave to proceed in forma pauperis & Clk. of Court file documents pertaining to above-entitled action that have been received to date; further ordered costs of filing waived; Stuart, J. (copies to attys.)
Oct. 24	Filed Complaint.
Oct. 24	Filed Pltf's. Motion for Appointment of Person to Serve Process under Rule 4, FRCP.
Oct. 24	Filed Order; Ordered that Ms. Dolores Thur- man, doing business at 522 Mulberry Avenue, Mus- catine, Ia., is appointed to serve summons & Com- plaint herein on Deft. Elizabeth Masterson.
Oct. 24	Filed Pltf's. Motion for 3-Judge Court.
Oct. 24	Filed Order: Court finds cplt. raises substantial issues which require adjudication by a 3-Judge Court under 28 U.S.C. ss2281 & 2284; The Honorable Chief Judge of the U. S. Court of Appeals, 8th Circuit is requested to convene a 3-Judge Court to hear & de- termine this case; Stuart, J. (copies to attys. copies included w/summons & cplt.
Oct. 24	Filed Pltf's. Motion for Preliminary Injunction.
Oct. 24	Filed Pltf's. Memorandum in Support of Motion for Preliminary Injunction.
Oct. 24	Issued Summons (Orig. & 1 copy) and forward- ed to person apptd. for service of summons by cert. mail. on deft. Masterson.

DATE	PROCEEDINGS
1973	
Oct. 24	Issued Summons (Orig. & 1 copy) and deld. to U. S. Marshal. on deft. Burns.
Oct. 29	Filed Summons w/ret. on Elizabeth Masterson by Ms. Dolores Thurman, Court appointed to serve summons. Personal service 10-26-73.
Oct. 30	Filed Order; 8th CCA, ordered that Pat Mehaffy, Chf. Judge, 8th Circuit designates Circuit Judge Roy L. Stephenson, District Judge William C. Hanson, and District Judge W. C. Stuart to hear & determine action; P. Mehaffy, Chf. Judge, 8th Circuit. (copies to attys & to 3-Judge Court w/copy of file to Judges Hanson & Stephenson.
Nov. 1	Filed Notice & Order re: Discussing future course of litigation for hearing 11-9-73, at 2:30 in Des Moines, Iowa; Stuart, J. (copies cert. mail to defts.) copies to attys. copies to 3-Judge Court.
Nov. 19	Filed Summons w/mar's. ret. on Kevin J. Burns on 10-29-73; Lathrum, Dpty. Mar's. Fees \$33.24.
Nov. 19	Filed Order; Ordered all motions to be filed by 5:00 pm 11-20-73; Pretrial stipulation of facts w/report of facts still disputed to be prepared by parties & filed by 5:00 pm 11-28-73; pltfs. to file initial brief by 5:00 pm 12-11-73; Defts. file their brief by 5:00 pm 12-26-73; Pltfs. file reply brief if any by 1-4-74, 5:00 pm; Combined hearing on propriety of issuing preliminary relief on ultimate merits for 1-24-74, 10:00 am; Stuart, J. (copies to attys.) (copies to 3-Judge Court.)
Nov. 20	Filed Defts' Motion to Dissolve Three-Judge Court. (copies to 3-Judge Court.)
Nov. 20	Filed Defts' Motion to Dismiss & Motion for Summary Judgment. (copies to 3-Judge Court.)
Nov. 21	Filed Pltf's. Motion to Join Party Deft. (copies to 3-Judge Court.)

DATE	PROCEEDINGS
1973	
Dec. 5	Filed Pltf's. Amendment to Complaint (copies to 3-Judge Court.)
Dec. 5	Issued Summons (In accordance with Pltf's USM 285 forms) and deld. to U. S. Marshal for Service (Orig. & 2 copies 60 day)
Dec. 12	Filed Pltf's. Request for Extension of Deadline for Submitting Stipulations of Fact. (copies to 3-Judge Court.)
Dec. 12	Filed Pltf's. Resistance to Motions to Dismiss & For Summary Judgment. (copies to 3-Judge Court.)
Dec. 12	Filed Pltf's. Resistance to Motion to Dissolve 3-Judge Court. (copies to 3-Judge Court.)
Dec. 17	Filed Order, time for submitting stipulations of fact is extended to 1-4-74; Longstaff, Clk. Mgstr. (copies to attys.) (copies to 3-Judge Court.)
Dec. 17	Filed Pltf's. Brief in Support of Motion for Preliminary Injunction. (copies to 3-Judge Court.)
Dec. 27	Filed Summons w/mar's. ret. on U.S.Dept. of Agriculture on 12-13-73 by U.S. Atty A. Donielson and on 12-17-73 by Robert Perry, Acting Officer-in-Charge of Foods & Nutrition Section Adkins, Dpty. Mar's. Fees \$18.00.
1974	
Jan. 7	Filed Pltf's. Request for Extension of Time for Stipulations and for Reply Brief. (copy to 3-Judge Court.)
Jan. 8	Filed Order; Ordered that time for filing reply brief extended to one week after filing of brief by defts; time for filing stipulations extended to 1-14-74; Longstaff, Clk. Mgstr. (copies to attys. & D.W.) (copies to 3-Judge Court.)



DATE	PROCEEDINGS
1974	
Jan. 15	Filed Defts' Motion for Enlargement of Time.
Jan. 15	Filed Order; Ordered Defts. have to & including 1-22-74 to file Stipulation & Brief. Longstaff, Clk. Mgstr. (copies to 3-Judge Court) (copies to attys.)
Jan. 23	Filed Parties Stipulation. (copies to 3-Judge Court.)
Jan. 23	Filed Parties Stipulation No. 2. (copies to 3-Judge Court.)
Jan. 23	Filed Parties Stipulation No. 3. (copies to 3-Judge Court.)
Jan. 23	Filed Defts' Memorandum Brief in Support of Motion to Dismiss & Motion for Summary Judgment. (copies to 3-Judge Court.)
Jan. 24	Filed Clerk's Court Minutes Re: Oral Hearing on Preliminary Injct.; Entered: Oral comments by the Court. Pltf's. ex. 1,2,&3 offered & received. Defts. Ex.A,B&C. received. Dept. of U.S. Agr., moved to be dismissed from case; Counsel responded. Court took motion under submission. Arguments to Court by Counsel. Deft. State of Iowa granted 3 days to file further documents. Pltf. granted 5 days to respond. Court recessed at 12:10 pm Stephenson, Hanson & Stuart.
Jan. 25	Filed U.S.A. Dept. of Agriculture's Motion to Dismiss. (copies to 3-Judge Court.)
Jan. 25	Filed U.S.A. Dept. of Agr. Memorandum in Support of Motion to Dismiss. (copies to 3-Judge Court.)
Jan. 25	Filed U.S.A. Dept. of Agr's Certificate of Service Re: Memorandum in Support of Motion to Dismiss & Motion to Dismiss.
Jan. 25	Filed Defts' Production of Documents & Explanatory Affidavit. (copies to 3-Judge Court).

DATE	PROCEEDINGS
1974	
Jan. 25	Filed Court Reporter Melvin Durgin's Notes re: Hrg. on Preliminary Injct. (and ret. to Mr. Durgin.)
Feb. 5	Filed Pltf's Supplemental Brief (copies to 3-Judge Court.)
Feb. 5	Filed Pltf's Motion for Leave to Amend (copies to 3-Judge Court.)
Feb. 5	Filed Pltf's Motion to Join Party Deft (copies to 3-Judge Court.)
Mar. 4	Filed Memorandum & Ruling; Concluded that defts., successors, in office, agents & employees & all others in active concert & participation with them should be permanently enjoined from including in the "Monthly Net Income" of any person receiving same, any amt. received by such person as reimbursement for necessary commuting expenses pursuant to an Individual Training and Education Plan, unless such amount is deducted from such person's Monthly Net Income in determining such person's Adjusted net Income. Defts. should promptly recompute adjusted net incomes of such persons. All motions still pending where pltf's have attempted to add either Dept. of Agr. or Sec. of Agr. or both as parties to action, denied; costs to be taxed to defts. Judges Stephenson, Hanson & Stuart (copies to attys.) 47 OJ 64)
Mar. 4	Filed Memorandum and Order; Ordered defts., successors in office, agents, employees, & all others in active concert & participation with them should be permanently enjoined from including in "Monthly Net Income" of any persons receiving same, any amount received by such person as reimbursement for necessary commuting expenses pursuant to Individual Education & Training Plan, unless such

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DATE	PROCEEDINGS
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1974

amount is deducted from such person's monthly net income in determining such person's adjusted net income; further ordered defts. to promptly recompute adjusted net income for each person presently participating in food stamp program who has been paying a wrongfully high price for his food stamp allotment & charge such person the lesser amt. figured in compliance herewith for next purchase of food stamps & each subsequent purchase thereof; Pltfs motion still pending attempting to add eith Dept. of Agr. Or Sec. of Agr. as parties is denied; costs taxed to defts. and permanent Injct. to be issued by Clerk in accordance herewith; Stephenson, Cir. Judge, William C. Hanson, Chf. Dist. Judge, William C. Stuart, Dist. Judge. (47 OJ 63) copies to attys.

Mar. 6 Filed Judgment:

Entered: Defts. shall promptly recompute adjusted net income for each person who is presently participating in the food stamp program & who has been paying a wrongfully high price for his food stamp allotment because his adjusted net income has been improperly computed, & charge such person the lesser amt. figured in compliance herewith for the next purchase of food stamps and each subsequent purchase thereof so long as such person receives such reimbursement for necessary commuting expenses; further ordered all motions still pending whereby pltfs. have attempted to add either Dept. of Agr. or Sec. of Agr. or both as parties to this action are denied. Further Ordered & adjudged that Clerk of Court shall issue a Writ of permanent injunction as ordered in Memorandum & Order filed 3-4-74 in this action; further ordered & adjudged that costs of this action are taxed to defts. & action stands dismissed; Longstaff, Clk. Mgstr. (47 OJ 66) copies to attys.

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DATE	PROCEEDINGS
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1974

Mar. 6 Filed Injunction: Defts. Kevin J. Burns, ind. & in her capacity as Director of Muscatine County Dept. of Social Services, their successors in office, their agents & employees and all other persons in active concert or participation with them are hereby permanently enjoined from including in the "Monthly Net Income" of any person receiving same, any amt. received by such person as reimbursement for necessary commuting expenses pursuant to an Individual Education & Training Plan, unless such amt. is deducted from such person's monthly net income in determining such person's adjusted net income; Longstaff, Clk., Mgstr. (copies to attys.) 47 OJ 67

Mar. 13 Filed Defts' Motion for New Trial. (copies to 3-Judge Court.)

Mar. 14 Filed Pltf's Motion for Enlargement of Time. (copies to 3-Judge Court.)

Mar. 14 Filed Order; Ordered that Pltf. shall have up to & including 3-25-74, to file supplemental brief on issue of damages; Longstaff, Mgstr. (copies to attys.) (copies to 3-Judge Court.)

Mar. 25 Filed Pltf's Resistance to Motion for New Trial. (copies to 3-Judge Court.)

Mar. 26 Filed Pltf's. Supplemental Brief. (copies to 3-Judge Court)

Mar. 27 Filed Defts' Application for Stay. (copies to 3-Judge Court.)

Mar. 27 Filed Ruling on Motion for New Trial; Ordered defts' motion for new trial is denied; Stephenson, Circuit Judge/Hanson Chf. Dist. Judge; Stuart, Dist. Judge (copies to attys.) (47 OJ 124).

Apr. 8 Filed Pltf's 2nd supplemental Memorandum on Issue of Relief. (copies to 3-Judge Court.)



DATE	PROCEEDINGS
1974	
Apr. 12	Filed Defts' Memorandum on Issue of Relief (copies to 3-Judge Court.)
Apr. 22	Filed Deft's Notice of Appeal to the Supreme Court of the United States (I hereby certify that I mailed a copy of the Notice of Appeal to Robert Bartels, University of Iowa, College of Law, Iowa City, Iowa 52242, and to Barry A. Lindahl, Univ. of Iowa, College of Law, Iowa City, Iowa 52242, plaintiff's attorneys & to Robert DeKock, Muscatine Legal Assistance, Muscatine, Iowa, plaintiff's attorney, and to Lorna L. Williams, Special Assistant Attorney General, and Thomas R. Hronek, Assistant Atty. General State of Iowa, 4th Floor Lucas Office Bldg., Des Moines, Iowa 50319, attorneys for defendant.) R. E. Longstaff, Clk. by /s/ Gertrude Daniels, Deputy Clerk. (copies to 3-Judge Court.)
Apr. 29	Filed Defts. Request for Transcript of entire record to Clk. of Supreme Court of U.S.
Nov. 14	Motion and Order for Withdrawal of Robert DeKock. Copy to DeKock only
Dec. 12	Filed attested copy of Judgment of the Supreme Court of the United States: Ordered that judgment of U. S. Dist. Court is vacated & cause remanded for reconsideration in light of revision of regulations of Dept. of Agriculture. /s/ a True Copy, Michael Rodak, Jr., Clk. Supreme Court of U.S. by Julian Slyaugh, Dept. (copies to attys.) copies to 3-Judge Court.
Dec. 18	Filed Order; Ordered parties have to 1-17-75 to either agree on proper order upon remand in accordance with Order of Supreme Court or file appln. & Brief for appropriate action & reconsideration in light of revision of regulations of Dept. of Agr. Stuart, J. (copies to attys.) (copy to 3-Judge Court.)

DATE	PROCEEDINGS
1975	
Jan. 6	Filed Order; Ordered that order of 12-18-74 is rescinded; further ordered parties to action have to 1-17-75 to agree upon proper order on remand in accordance with Order of Supreme Court of U.S. or to file application & brief for appropriate action & reconsideration. Stuart, J. (copies to attys.) (copy to 3-Judge Court.)
Jan. 9	Filed Motion of pltf. to join Party Deft/Motion for leave to amend Complaint. copy to 3-Judge Court.
Jan. 9	Filed Motion for Order to Marshal to Service Process. (copy to 3-Judge Court)
Jan. 10	Filed Order; U.S. Marshal to service Sec. of Agr. Earl Butz, per amended complaint. Stuart, J. (copy to 3-Judge Court.)
Jan. 10	Issued Summons (Orig. & 4 copies 60 day) and deld. to U.S. Marshal
Jan. 14	Filed Summons w/mar's ret. 1-13-75 of service by A. Donielson, U. S. Atty. Atty. General Wash., D.C. by cert. mail and Earl Butz, Sec. of Agri. by Cert. Mail. Lathrum, Dpty. Mar's. Fees \$16.00.
Jan. 16	Filed Pltf's. Motion for Summary Judgment. (copy to 3-Judge Court.)
Jan. 17	Filed Defts' Motion for Summary Judgment; and Motion for Dismissal (copy to 3-Judge Court)
Jan. 17	Filed Defts' Brief in Support of Deft's. Motion for Summary Judgment; Motion to Dismiss. (copy to 3-Judge Court.)
Jan. 20	Filed Pltf's. Brief in Support of Motion for Summary Judgment.
Jan. 21	Filed Addl. Deft. Earl Butz's Application for Extension of time w/cert. of service.

DATE	PROCEEDINGS
1975	
Jan. 21	Filed Order, Deft. U.S.A. has to 3-14-75 to respond to pltf's. Motion for Summary Judgment; Longstaff, Clk. Mgstr. (copies to attys.)
Mar. 12	Filed Deft. Earl Butz' Appln. for Extension of time (copies to 3-Judge Court.) w/cert. of service.
Mar. 17	Filed Resistance To Application for Ext. of Time (pltffs)
Mar. 17	Filed Order Extending Time to/inc. 4-1-75. /s/ REL, Clk-Mag. Copies to 3-Judges and counsel.
Apr. 1	Filed Defts' Motion for Summary Judgment & Opposition to Pltfs' Motion for Summary Judgment, w/cert. of service. (copies to 3-Judge Court.)
Apr. 23	Filed Pltf's. Memo. in opposition to Deft. Butz's Motion for Summary Judgment. (copies to 3-Judge Court.)
May 2	Filed Deft. U.S.A.'s Motion for Leave to File Reply. (copy to 3-Judge Court) w/cert. of service.
May 5	Filed Pltf's. Motion for order permitting Barry Matsumoto, to appear as counsel on bhlf. of pltf.
May 6	Filed Pltf's Memorandum in Opposition to Deft. Butz's Motion for Leave to Reply. (copies to 3-Judge Court.)
June 3	Filed Deft. U.S.A.'s Reply to Pltfs' Memorandum in opposition to Motion for summary Judgment (copies to 3-Judge Court.) w/cert. of service.
July 3	Filed Pltfs' Supplemental Memorandum on Motion for Summary Judgment.
Oct. 10	Filed Memorandum; Pltf's. Motion for Summary Judgment granted. Deft's. Motion for Summary Judgment denied. Stephenson, Cir. Judge Hanson, Chf. Judge & Stuart, J's. (copies to attys.) (51 OJ 279) (copies to 3-Judge Court)

DATE	PROCEEDINGS
1975	
Oct. 10	Filed Judgment Order; Ordered Pltf's. Motion for summary judgment granted, deft's. Motion for summary judgment denied/. further ordered defts. their successors in office, agents & employees are permanently enjoined from including in monthly net income of any person receiving same any amt. received by such person as reimbursement for necessary commuting expenses, pursuant to Individual Education & Training Plan, unless such amt. is deducted from such person's net monthly income in determining such person's adjusted gross income. Further ordered defts. recompute the adjusted net income for each person who is presently participating in food stamp program & who has been paying a wrongfully high price for his food stamp allotment, & that defts. make a forward adjustment of price of future stamps by reducing price of food stamp coupons in future months by whatever amt. necessary for as many months as necessary so as to fully compensate recipient financially for food stamps wrongfully denied in past. Stephenson, Circuit Judge, Hanson, Chf. Dist. Judge, W. Stuart, Dist. Judge. (51 OJ 280) (copies to attys.) (copies to 3-Judge Court.)
Oct. 17	Filed Defts. Earl Butz, Sec. of Agr. and U.S.A.'s motion to Stay Judgment of 10-10-75. (copies to 3-Judge Court.) w/cert. of service.
Oct. 23	Filed Order: Ordered that judgment of this Court, entered Oct. 10, 1975, be & is hereby stayed until Dec. 9, 1975. (to allow defts time to determine viability of an appeal). /s/ Stephenson, Cir. J., Hanson, Chf. J., Stuart, Dist. J. (52 OJ 32) (copies to d-J's., Mr. Matsumoto, Atty. Gen'l. (Iowa) and U.S. Atty.



DATE	PROCEEDINGS
1975	
Nov. 7	Filed federal defts. Notice of Appeal fr. Judgment of 10-10-75. (I hereby certify that I mailed a copy of the foregoing Notice of appeal to Robert Bartels and Barry Matsumoto, University of Iowa, College of Law, Iowa City, Iowa 52242, attys. for plaintiff., and to Mrs. Lorna L. Williams, Spec. Asst. Atty. General, 4th Floor Lucas Office Bldg., Des Moines, Iowa 50319, and to Mr. Theodore R. Boecker, Asst. Atty. General, 4th Floor Lucas Office Bldg., Des Moines, Iowa, attys. for deft. Kevin J. Burns; and to Allen L. Donielson, U.S. Atty., Paul Zoss, Asst. U.S. Atty., and James R. Rosenbaum, 1st Asst. U.S. Atty., Room 113 U.S. Courthouse E. 1st & Walnut Streets, Des Moines, Iowa 50309, atty for federal defts. R. E. Longstaff, Clerk by: /s/ Gertrude Daniels, Dpty. Clk.)
Dec. 9	Filed Federal Defts. Notice of Appeal to 8th Cir. Court of Appeals fr. judgment of 3-judge Dist. Court entered 10-10-75. (I hereby certify that I mailed a copy of the foregoing Notice of Appeal to Mr. Barry Matsumoto, University of Iowa, College of Law, Iowa City, Iowa, attorney for plaintiff; and to Lorna L. Williams, Spec. Asst. Atty. General State Capitol Building ———, Des Moines, Iowa 50319, and to Mr. Theodore R. Boecker, Asst. Atty. General State of Iowa, 4th Floor Lucas Office Bldg., Des Moines, Iowa, attorneys for state defendants; and to Allen L. Donielson, U. S. Attorney. Paul Zoss, Asst. U. S. Attorney, and James R. Rosenbaum, Asst. U.S. attorney Room 113, U. S. Courthouse E. 1st & Walnut Des Moines, Iowa 50309, attys. for deft. Earl Butz, & U.S.A. R. E. Longstaff, Clk. by /s/ Gertrude Daniels, Dpty. Clk. (copies to 3-Judge Court.)
Dec. 8	Filed state defendants Notice of Appeal to 8th Circuit Court of Appeals fr. judgment of 3-judge

DATE	PROCEEDINGS
1975	
	Dist. Court entered 10-10-75. (I hereby certify that I mailed a copy of the foregoing Notice of appeal to Mr. Barry Matsumoto, University of Iowa, College of Law, Iowa City, Iowa, attorney for plaintiff; and to Lorna L. Williams, Spec. Asst. Atty. General State Capitol Building———, Des Moines, Iowa 50319, and to Mr. Theodore R. Boecker, Asst. Atty. General State of Iowa, 4th Floor Lucas Office Bldg., Des Moines, Iowa attorneys for state defendants; and to Allen L. Donielson, U. S. atty., Paul Zoss, Asst. U.S. Atty. and James R. Rosenbaum, Asst. U. S. Atty., Room-113, U. S. Courthouse, E. 1st & Walnut, Des Moines, Iowa 50309, attys. for Deft. Earl Butz & U.S.A. R. E. Longstaff, Clk. by /s/ Gertrude Daniels, Dpt. Clk. (copies to 3-judge court.)
Dec. 8	Filed State Defendants Notice of Appeal to Supreme Court of U.S. (I hereby certify that I mailed a copy of the foregoing Notice of Appeal to Barry Matsumoto, University of Iowa, College of Law, Iowa City, Iowa, atty. for plaintiff; and to Mrs. Lorna L. Williams, State Capitol Building, Des Moines, Iowa 50319 and Theodore R. Boecker, Spec. Asst. Atty. General, and Asst. Atty. General, respectively, 4th Floor Lucas Office Bldg., Des Moines, Ia., 50319, attys. for state defendants; and to Allen L. Donielson, U.S. Atty., Paul Zoss, Asst. U.S. Atty., and James R. Rosenbaum, Asst. U.S. Atty., Room 113, U.S. Courthouse, E. 1st & Walnut, Des Moines, Iowa 50309, atty. for Deft. Earl Butz, & U.S.A. R. E. Longstaff, Clk. by /s/ Gertrude Daniels, Dpty. Clk. (copies to 3-Judge Court.)
Dec. 9	Filed Deft. Earl Butz' Secretary of Ag. Motion to Stay. (copies to 3-Judge Court.)
Dec. 17	Filed Order: Ordered judgment entered 10-10-75 stayed to 1-8-75 [sic]. Stephenson, Circuit Judge,

DATE	PROCEEDINGS
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1975

Hanson, Chf. District Judge, Stuart, Dist. Judge.  
(copies to attys.) Attested copy to 8th CCA. copies  
to 3-judge court.

Dec. 29 Filed attested copy of Order fr. 8th CCA, Or-  
dered appeal stayed until further Order of Court.  
/s/ Robert C. Tucker, Clk. U.S. Court of Appeals,  
8th CCA. A True Copy. (copies to attys. & to 3-  
Judge Court.)

1976

Jan. 8. Filed Defts' E. Rutz & U.S.A.'s Motion to Stay.  
(copies to 3-Judge Court.) (Cert. of Service)

Jan. 12 Filed Order; Ordered Judgment of Court en-  
tered 10-10-75 stayed pending appeal to U. S. Su-  
preme Court. Stephenson, Circuit Judge, William C.  
Hanson, Chief District Judge, William C. Stuart,  
District Judge; copies to attys. copy to 3-Judge  
Court; attested copy 8th CCA.

June 7 Filed attested copy of Notice fr. Supreme Court  
re: noting probable jurisdiction of case, and allotting  
a total of one hour for oral argument. /s/ a true  
copy, Michael Rodak, Jr. Clk. Supreme Court of US.  
by Laura P. Hill, Dpty. (copies to 3-Judge Court;  
copies to attys.)

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

Civil Action Number 73-240-1

[Filed Oct. 24, 1973, R. E. Longstaff, Clerk, U.S. District  
Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other  
persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as  
Commissioner of Social Services; and ELIZABETH  
MASTERSON, Individually and in her capacity as Di-  
rector of the Muscatine County Department of Social  
Services, DEFENDANTS

## COMPLAINT

## I.

*Preliminary Statement*

1. Plaintiff, individually and on behalf of all other  
persons similarly situated, seeks to have this Court de-  
clare invalid and enjoin the enforcement by the De-  
fendants of a state regulation located in the Iowa State  
Department of Social Services Employees' Manual Sec-  
tion VII, Chapter 3, Page 16, Item d (hereinafter referred  
to as "Employees' Manual VII-3-16-d"). Employees'  
Manual VII-3-16-d and the actions of the Defendants  
are challenged on the grounds that they are in conflict  
with the guarantees contained in the Fifth and Four-  
teenth Amendments to the Constitution of the United  
States and the Civil Rights Act of 1964, and with fed-  
eral statutes and regulations.

## II.

*Jurisdiction*

2. This action is authorized by and brought under 42  
U.S.C.A. § 1983, which provides a cause of action for  
the deprivation, under color of State law, of any right,



privilege, or immunity guaranteed by the Constitution and the laws of the United States.

3. Jurisdiction is conferred on this Court by 28 U.S.C. § 1343(3), which provides for original jurisdiction of this Court in suits to redress the deprivation, under color of State law, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States.

4. Jurisdiction is further conferred on this Court by 28 U.S.C. § 1337, which provides for original jurisdiction of this Court in any civil action or proceeding arising under any Act of Congress regulating commerce or protecting trade and commerce against restraints and monopolies.

5. Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and by Rule 57 of the Federal Rules of Civil Procedure.

### III.

#### *Three-Judge Court*

6. Insofar as Plaintiff seeks an injunction to restrain Defendants from the enforcement, operation, and execution of a State regulation on the ground that said regulation is contrary to the Constitution of the United States, this is a proper case for determination by a Three-Judge Court pursuant to 28 U.S.C. §§ 2281 and 2284.

### IV.

#### *Class Action*

7. The named Plaintiff brings this action on her own behalf, and on behalf of all other persons similarly situated, pursuant to Rule 23 of the Federal Rules of Civil Procedure. The members of this class are all persons whose transportation allowances received under Individual Training Programs are included as income by the Department of Social Services in determining the price they must pay for their allotted food stamps, while at

the same time such allowances are specifically denied deduction status by virtue of Employees' Manual VII-3-16-d.

8. The requirements of Rule 23 are met in that the class is so numerous that joinder of all members is impractical, there are questions of law and fact common to the class, the claims of the representative party will fairly and adequately protect the interests of the class, and the party opposing the class has acted on grounds generally applicable to the class, thereby making appropriate final injunctive and declaratory relief with respect to the class as a whole.

### V.

#### *Parties*

9. The Plaintiff, Karen Hein, is a divorced woman of 31 years of age whose household includes two minor children, ages 12 and 10.

10. Plaintiff is and has been during all relevant periods a resident of Muscatine County, Iowa.

11. Defendant Kevin J. Burns is the Commissioner of Social Services, and his office is the Department of Social Services for the State of Iowa, Des Moines, Iowa.

12. Defendant Elizabeth Masterson is Director of the Muscatine County Department of Social Services, and her office is the Department of Social Services for the County of Muscatine, Muscatine, Iowa.

### VI.

#### *Facts*

13. On October 21, 1968, Plaintiff was divorced from her husband, and given custody of their two minor children. At about the same time, she became eligible for Aid to Dependent Children, food stamps and other welfare assistance.

14. On September 6, 1972, the Muscatine County Department of Social Services approved Mrs. Hein's Individual Training Plan, which provided for payment of

her tuition at Saint Luke's School of Nursing, Davenport, Iowa and for a \$44 monthly allowance for transportation expenses for necessary commuting to Davenport from Muscatine under said Training Plan. At the same time, because of said transportation allowance, the purchase price of the amount of food stamps Plaintiff secured each month was increased from \$46 to \$58, since the Department of Social Services denied deduction status for transportation allowance in computing her monthly income, pursuant to Employees' Manual VII-3-16-d.

15. On November 3, 1972, Plaintiff appealed the decision of the Muscatine County Department of Social Services, and on February 14, 1973, the decision was affirmed by the hearing officer. The Commissioner of the Department of Social Services reaffirmed that decision on February 23, 1973.

16. Employees' Manual VII-3-16-d provides for deductions from income for the following:

The total payments which are made to cover specific training costs; i.e., babysitting, child care, books, tuition, etc., when the recipient is participating in a training program sponsored by local, county, state or federal government. *Note* Transportation and other miscellaneous expenses such as uniforms, shoes, etc., are not to be considered specific training costs and are not deductible.

17. Federal regulations for the operation of the Food Stamp Program expressly allow deductions for the following household expenses:

(e) Educational expenses which are for tuition and mandatory school fees, including such expenses which are covered by scholarships, educational grants, loans, fellowships, and veterans' educational benefits.

7 C.F.R. § 271.3(c) (1) (iii) (e).

18. The position of the Defendant Commissioner of the Iowa Department of Social Services is that the mileage allowance provided for the training program is not an allowable deduction and must be considered income for purposes of food stamp computation.

19. Since September, 1972, Plaintiff has been paying an additional \$12 per month to buy her monthly amount of food stamps. This additional payment, because of Plaintiff's impoverished circumstances, results in a hardship on her and her children.

## VII.

### *Causes of Action*

20. FOR HER FIRST CAUSE OF ACTION, Plaintiff states that Employees' Manual VII-3-16-d is inconsistent with the federal regulations governing the operation of the Food Stamp Program in that 7 C.F.R. § 271.3 (c) (1) (iii) (e) provides for a deduction for mandatory educational fees such as Plaintiff's travel expenses, while the challenged state provision specifically denies such a deduction.

21. FOR HER SECOND CAUSE OF ACTION, Plaintiff states that Employees' Manual VII-3-16-d is inconsistent with the Federal Food Stamp Act, specifically 7 U.S.C. §§ 2011-2014, in that said State regulation

a. does not mitigate, but rather exacerbates, the contribution of "the limited food purchasing power of low-income households . . . to hunger and malnutrition among members of such households" (§ 2011);

b. does not permit, but rather prevents, "low-income households to purchase a nutritionally adequate diet through normal channels of trade" (§ 2011);

c. denies assistance to some households "whose income and other financial resources are determined to be substantial limiting factors in permitting them to purchase a nutritionally adequate diet" (§ 2014 (a)); and

d. ignores the special concern for persons participating in an "accredited school or training program" that is demonstrated in 7 U.S.C. § 2014(c).

22. FOR HER THIRD CAUSE OF ACTION, Plaintiff states that Employees' Manual VII-3-16-d deprives



her of due process rights guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution in that, by including the necessary transportation allowance in Plaintiff's income without allowing a corresponding deduction, Defendants have created an incorrect irrebuttable presumption that the Plaintiff has more disposable income with which to purchase food stamps by virtue of her receiving the allowance. This administrative mechanism, based on an irrebuttable presumption contrary to fact, fails to provide the Plaintiff critical due process rights set forth in *Stanley v. Illinois*, 405 U.S. 645 (1972), and *United States Department of Agriculture v. Murry*, — U.S. —, 41 U.S.L.W. 5099 (June 25, 1973).

23. FOR HER FOURTH CAUSE OF ACTION, Plaintiff states that Employees' Manual VII-3-16-d violates her right to equal protection guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution in that the challenged provisions creates distinctions between those who are participating in training programs and those who are not that are in no rational way related to the purposes of the Federal Food Stamp Program.

24. FOR HER FIFTH CAUSE OF ACTION, Plaintiff states that Employees' Manual VII-3-16-d violates her right to equal protection guaranteed by the Fourteenth Amendment to the United States Constitution in that the challenged provision creates arbitrary distinctions between different education expenses, thereby forcing Plaintiff to pay more for her food stamps because she receives a transportation allowance than do other persons, with exactly the same amount of disposable income, who receive non-transportation allowances, such as allowances for babysitting and books.

#### VIII.

##### *Prayer for Relief*

WHEREFORE, Plaintiff respectfully prays on behalf of herself and of all other persons similarly situated that this Court:

A. Assume jurisdiction of this cause, convene a three-judge court pursuant to 28 U.S.C. §§ 2281 and 2284 to determine this controversy, and promptly set this case down for a hearing.

B. Determine by order pursuant to Rule 23(c)(1) of the Federal Rules of Civil Procedure that this action be maintained as a class action.

C. Pending a hearing and determination by a three-judge court grant a temporary restraining order, pursuant to 28 U.S.C. § 2284(3), enjoining Defendants and their successors in office, agents and employees, and all other persons in active concert and participation with them, from continuing to cause irreparable harm to the Plaintiff by including in her monthly income for the purpose of computing the cost of her monthly food stamps the amount reimbursed to her under the Individual Training Plan for necessary commuting expenses while specifically denying a deduction for the same.

D. Enter a declaratory judgment pursuant to 28 U.S.C. §§ 2201 and 2202 and Rules 54, 57, and 58 of the Federal Rules of Civil Procedure declaring Employees' Manual VII-3-16-d invalid on the grounds that it is inconsistent with the provisions of the Federal Food Stamp Act, 7 U.S.C. §§ 2201, et seq., with 7 C.F.R. § 271.3, and with the Fifth and Fourteenth Amendments to the United States Constitution.

E. Enter a preliminary and permanent injunction, pursuant to Rule 65 of the Federal Rules of Civil Procedure, enjoining Defendants, their successors in office, agents and employees, and all other persons in active concert and participation with them from including the amount reimbursed for necessary commuting expenses under an Individual Training Plan in the Plaintiff's monthly income for the purpose of computing her monthly food stamps price, without allowing a deduction for the same.

F. Order the Defendants and their successors in office to notify promptly by first class mail at their last known address all persons who have been paying higher prices for their monthly food stamps allowance because of Employees' Manual VII-3-16-d, that they will be pay-

ing from now on an adjusted figure, and state the new figure.

G. Grant this Plaintiff and all other persons similarly situated monetary damages in the appropriate amounts for food stamp prices wrongfully increased.

H. Pursuant to Rule 54(d) of the Federal Rules of Civil Procedure, allow Plaintiff costs herein.

I. Grant such additional or alternative relief as may seem to this Court to be just, proper, and equitable.

Respectfully submitted,

/s/ Robert Bartels  
Robert Bartels  
Attorney for Plaintiff  
University of Iowa  
College of Law  
Iowa City, Iowa 52242  
(319) 353-4031

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Iowa City, Iowa on the 17th day of October, 1973.

/s/ Robert Bartels

#### IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA

Civil Action Number 73-240-1

[Copies to 3-Judge Court—1-23-74]

[Filed Jan. 23, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services; and ELIZABETH MASTERSON, Individually and in her capacity as Director of the Muscatine County Department of Social Services, DEFENDANTS

#### STIPULATION

It is stipulated between the parties to the above-entitled action that the following facts are admitted by both parties and shall be taken as true for the purposes of this action:

1. Ms. Karen Hein is a divorced woman 31 years of age, residing at 1114 Filmore, Muscatine, Iowa.

2. Ms. Hein's household includes two minor children, to wit:

Anthony G. Hein, born November 8, 1960  
Wendy S. Hein, born July 26, 1963

3. Ms. Hein was granted a divorce from her husband on October 21, 1968, and was given custody of said minor children.

4. Immediately subsequent to the divorce, Ms. Hein became eligible for food stamps and other welfare assistance.

5. Ms. Hein petitioned the Muscatine County Department of Social Services to allow her to receive training



under an Individual Education and Training Plan so that she could eventually become a registered nurse.

6. On September 6, 1972, the Muscatine County Department of Social Services approved Ms. Hein's training plan, which provided for payment of her tuition at Saint Luke's School of Nursing in Davenport, the closest facility providing the desired training, and for a monthly Work and Training allowance for necessary commuting under said plan in the maximum allowable flat amount of \$44.

7. At the same time that Ms. Hein's training plan was approved, the purchase price of the \$92 worth of food stamps Ms. Hein was allowed to secure each month was increased from \$46 to \$58. Ms. Hein now receives \$94 worth of food stamps for \$58 as a result of an across-the-board increase to all food stamp recipients.

8. This \$12 increase in the purchase price of Ms. Hein's food stamps was dictated because Iowa State Department of Social Services Employees' Manual Section VII, Chapter 3, Page 13, Items g and h include education-related transportation allowances such as Ms. Hein's as an item of ADC income, while Section VII, Chapter 3, Page 16, Item d excludes such payments in computing deductions for food stamp prices.

9. Ms. Hein sought administrative appeal of the increase in the price of her food stamps; on February 14, 1973, the original decision was sustained by the Muscatine Department of Social Services.

10. The Commissioner of Social Services reaffirmed the decision of the Muscatine Department of Social Services on February 23, 1973.

11. Since September, 1972, Ms. Hein has been paying the extra \$12 per month for food stamps.

12. Ms. Hein has, during this period, continued to commute to Davenport to attend classes at Saint Luke's School of Nursing.

13. Prior to November 28, 1973, Ms. Hein had no savings, and only the following elements of income:

- a. \$28.75 a month rent from a house in which she owns a part interest;

- b. \$220 ADC;

- c. \$44 Work and Training Allowance; and

- d. \$36 food stamp bonus.

14. Prior to November 28, 1973, Ms. Hein's only assets were:

- a. One-half of a brick house at 1114 Filmore, Muscatine;

- b. One 1966 Ford; and

- c. Personal clothing, kitchen utensils and household furniture with a total value of approximately \$300.

15. Prior to November 28, 1973, Ms. Hein had liabilities amounting to approximately \$14,000, and monthly expenditures averaging about \$331 per month.

16. On or about November 28, 1973, Ms. Hein received a lump sum of money as a result of the death of her aunt; said money had been placed by Ms. Hein's aunt in a joint account. After payment of the aunt's funeral expenses, Ms. Hein received a total of \$4,924.04.

17. With the knowledge and permission of the Muscatine Department of Social Services, this sum of \$4,924.04 has been divided and disposed of as follows:

- a. \$2,503.52 reduction of mortgage on home;
  - b. 120.52 check to bank to satisfy indebtedness on automobile;
  - c. 1,500.00 escrow account in bank for use in reducing outstanding mortgage on homestead and making essential repairs thereon;
  - d. 800.00 savings account.
- \$4,924.04

18. Although the receipt of the money described in the preceding two paragraphs may make Ms. Hein ineligible for public assistance for one month, she will subsequently continue to receive ADC and food stamp assistance as before.

19. It is further stipulated by and between the parties that if Ms. Hein were called to testify, she would testify that as a result of the \$12 increase in the purchase price of the food stamps that Ms. Hein has needed to secure for herself and her family, she has been forced to:

- a. Borrow from a private relief fund administered by the County;
- b. Drive without automobile insurance;
- c. Pay interest charges for late payment of gas and electric bills;
- d. Do without telephone service for a period of time;
- e. Buy less than her allotted food stamp coupons; and
- f. Make do with less food and other necessities than is desirable for her family.

The foregoing stipulation does not waive objections by the parties with regard to relevance or admissibility of the evidence stated therein.

/s/ Robert Bartels

Attorney for Plaintiff

/s/ Lorna L. Williams  
Attorney for Defendants

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA

Civil Number 73-240-1

[1-23-74—Copies to 3-Judge Court]

[Filed Jan. 23, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services; and ELIZABETH MASTERSON, Individually and in her capacity as Director of the Muscatine County Department of Social Services, DEFENDANTS

STIPULATION NUMBER TWO

It is stipulated between the parties to the above-entitled action that the following facts are admitted by both parties and shall be taken as true for the purposes of this action:

1. It is stipulated that the United States Department of Agriculture Food and Nutrition Service on August 27, 1971, issued instructions which gave specific items which could be deducted from income upon a "hardship basis" for the purpose of figuring "net income" for food stamp purchases, but which did not expressly permit transportation costs connected with the WIN Program training to be deducted and which instructions ended the paragraph at the top of page 28 of Exhibit "C" attached hereto reading:

Under no circumstances will deductions from income be made for 'hardships' except as provided in this section.



2. It is stipulated that the United States Department of Agriculture Food and Nutrition Services on November 17, 1972, approved the page of the manual material of the Iowa Department of Social Services which denies transportation among other enumerated WIN expenses itemized in the "Note" following paragraph d on page VII-3-16, Employees' Manual of the Iowa Department of Social Services and dated January 23, 1973.

These stipulations do not waive objections by the parties with regard to relevance or admissibility.

/s/ Robert Bartels  
Robert Bartels

Attorney for Plaintiff

/s/ Lorna L. Williams  
Lorna L. Williams  
Attorney for Defendants

**IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA**

Civil No. 73-240-1

[Filed Jan. 23, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

**KAREN HEIN, Individually and on behalf of all other  
persons similarly situated, PLAINTIFF**

*vs.*

**KEVIN J. BURNS, Individually and in his capacity as  
Commissioner of Social Services; and ELIZABETH  
MASTERSON, Individually and in her capacity as Di-  
rector of the Muscatine County Department of Social  
Services, DEFENDANTS**

**STIPULATION NO. 3**

IT IS STIPULATED that if Donald L. Kassar, Chief of the Quality Control unit of the Iowa Department of Social Services, were called to testify herein, he would testify as follows:

1. That he and his unit is in charge of carrying out the Federal mandates verifying eligibility and correctness of the amount of issuance for the food stamp program and correctness of eligibility and payment for the ADC program pursuant to the Federal Food Stamp Act and Federal Social Security Act respectively;

2. That any money designated for transportation to an ADC recipient in connection with a work incentive program (or an approved training program under an Individual Education and Training plan) under the Social Security Act and any money designated for transportation to any student or trainee under scholarships, educational grants, loans, fellowships and veterans' educational benefits in connection with any schooling or training program is not in any said fact situations deducted when arriving at the "adjusted income" for food stamp purchases.

The foregoing stipulation does not waive objections by the parties with regard to relevance or admissibility of the evidence stated therein.

\* /s/ \_\_\_\_\_

ROBERT BARTELS  
Attorney for Plaintiff  
University of Iowa  
College of Law  
Iowa City, Iowa 52242

/s/ Lorna L. Williams  
LORNA L. WILLIAMS  
Special Assistant Attorney  
General of Iowa  
Attorney for Defendants  
Fourth Floor, Lucas Office Bldg.  
Des Moines, Iowa 50319

\* NOTE: Read via telephone to Mr. Bartels 1/23/74 and he said that he would sign this Stipulation tomorrow.

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

Civil No. 73-240-1

[Filed Mar. 4, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services, et al., DEFENDANTS

MEMORANDUM AND RULING

Before STEPHENSON, Circuit Judge, HANSON, Chief District Judge, and STUART, District Judge.

STUART, DISTRICT JUDGE.

This matter came on for hearing before this three-judge Court on the 24th day of January, 1973, on plaintiffs' motion for preliminary injunction. By agreement of the parties, the hearing on the ultimate merits of plaintiffs' claim was consolidated with the preliminary hearing. This Court was convened pursuant to 28 U.S.C. §§ 2281 and 2284 because plaintiffs are challenging a regulation of state-wide applicability promulgated by "an administrative board or commission acting under State statutes" and because several of the arguments raised by plaintiffs are of substantial constitutional import. Upon hearing the arguments of the parties and considering the documentary evidence and briefs filed herein, the Court makes the following findings of fact and conclusions of law.



### I. Findings of Fact.

The named plaintiff, Karen Hein, is a divorced mother of two minor children residing in Muscatine, Iowa. Except for a short period, the duration and cause of which are not relevant herein, she has, at all times material, been eligible for and in receipt of food-stamp assistance made available pursuant to the Food Stamp Act of 1964, as amended, 7 U.S.C. §§ 2011, *et seq.*; and Iowa Code §§ 234.6, 234.11. In addition to her food stamp assistance, Mrs. Hein is participating in an Individual Education and Training Plan under the auspices of which she has been receiving training as a nurse at St. Luke's School of Nursing in Davenport, Iowa. To help defray the cost of commuting from Muscatine to Davenport, Mrs. Hein receives a travel allowance of \$44 per month, all of which is spent for travel. Pursuant to the Iowa State Department of Social Services Employees' Manual § VII, ch. 3, p. 13, Item *j* [hereinafter Item *j*], this travel allowance is included as an item of income for determining "Monthly Net Income", for food stamp assistance purposes. Iowa State Department of Social Services Employees' Manual § VII, ch. 3, p. 16 Item *d* [hereinafter Item *d*], however, specifically denies the travel allowance deduction status in determining "Adjusted Net Income". Since it is this latter figure which directly determines the amount an individual must pay for his allotment of food stamps, plaintiff and the other members of the class she represents<sup>1</sup> have to pay more for food stamp aid because they are receiving their travel allowances, even though the allowances are spent entirely to defray commuting expenses and have no effect on their food purchasing power. The members of the class are thus placed in the unenviable position of being forced to choose between foregoing participation in a training program

<sup>1</sup> Plaintiffs have proposed that the class be defined so as to include all persons receiving transportation allowances pursuant to Individual Education and Training plans whose allowances are included as income in determining the price they must pay for their allotted food stamps but whose allowances are denied deductability by virtue of Item *d*. Defendants do not quarrel with this definition, and the Court hereby adopts it.

or attempting to stretch already meager resources a bit further in an attempt to obtain adequate nutrition.

### II. Conclusions of Law.

Plaintiffs raise both statutory and constitutional challenges to the regulatory scheme which places them in this quandry [sic]. They claim, first, that the Iowa regulations are inconsistent with the Food Stamp Act and the regulations promulgated pursuant thereto by the Food and Nutrition Service of the Department of Agriculture. 7 C.F.R. §§ 270.1-271.9. In addition, however, plaintiffs also claim the Iowa scheme violates the due process clauses of the 5th and 14th amendments by creating a conclusive presumption which is seldom, if ever, borne out by reality, namely, that recipients of travel allowances have more money with which to purchase food because of their receipt of such allowances. *See United States Department of Agriculture v. Murry* (1973), 413 U.S. 508, 514; *Vlandis v. Kline* (1973), 412 U.S. 441, 452; *Stanley v. Illinois* (1972), 405 U.S. 645, 656-57. Additionally, plaintiffs raise equal protection objections to the scheme, suggesting that it creates an arbitrary distinction between recipients of travel allowances and other food stamp recipients which is unrelated to any legitimate governmental interest. *See United States Department of Agriculture v. Moreno* (1973), 413 U.S. 528, 533-38.

Despite plaintiffs' able briefing and argument of the constitutional questions, the Court has concluded that the issues before it may be resolved on a purely statutory basis. Mindful, therefore, of the admonition that constitutional questions should not be needlessly decided, the Court declines to express any opinion about the constitutionality of the state regulatory scheme.

Proceeding to the claim that Iowa's method of computing the amount certain households must pay for food stamps is inconsistent with the federal statute and regulations, the Court notes, as a general precept, that the Food Stamp Act of 1964 and the regulations appurtenant thereto are remedial in nature and entitled to broad,

generous interpretation. To treat the Act and regulations otherwise would be "to abuse the interpretative process and to frustrate the announced will of the people". *A. H. Phillips, Inc. v. Walling* (1945), 324 U.S. 490, 493.

Thus, when Congress expressly declares:

It is hereby declared to be the policy of Congress, in order to promote the general welfare, that the Nation's abundance of food should be utilized \* \* \* to safeguard the health and well-being of the Nation's population and raise levels of nutrition among low-income households. The Congress hereby finds that the limited food-purchasing power of low-income households contributes to hunger and malnutrition among members of such households. The Congress further finds that increased utilization of food in establishing and maintaining adequate national levels of nutrition will promote the distribution in a beneficial manner of our agricultural abundances and will strengthen our agricultural economy, as well as result in more orderly marketing and distribution of food \* \* \*. Food Stamp Act of 1964, § 2, 7 U.S.C. § 2011.

this Court must liberally construe those words and view with disfavor any regulation which neither promotes adequate nutrition among low-income households nor benefits our agricultural economy.

This is precisely the situation we are faced with in determining the validity of Item *d*. By denying recipients of travel allowances a deduction from "Monthly Net Income" for such allowances, the Department of Social Services, in effect, encourages the continuance of the very situation the food stamp program was created to alleviate. Since the travel allowances must be spent entirely to defray commuting expenses, receipt of such allowances has no effect on food purchasing power. Yet under the Iowa formula for computing food stamp cost, the travel allowance operates to increase the amount an

affected household must pay to purchase a given quantity of food. This is amply illustrated by the case of the named plaintiff. Without her \$44 monthly travel allowance Mrs. Hein would have to pay \$46 each month to obtain food stamps with a purchasing power of \$94. Plaintiffs' Exhibit 1. With her travel allowance treated as it presently is under the Iowa scheme, she has to pay \$58 each month for the same \$94 worth of stamps.

In defense of this method of computing food stamp cost, the defendants point to 7 C.F.R. § 271.3(c)(1)(iii)(e), which provides, in part:

(iii) Deductions for the following household expenses shall be made:

\* \* \*

(e) Educational expenses which are for tuition and mandatory school fees, including such expenses which are covered by scholarships, educational grants, loans, fellowships, and veterans' educational benefits.

Defendants interpret this regulation to limit deductions for educational expenses solely to expenses for tuition and mandatory fees. In effect, defendants would have the Court rewrite the regulation as follows:

(e) Educational expenses which are for tuition and mandatory school fees, including *such expenses* [tuition and mandatory school fees] which are covered by scholarships, educational grants, loans, fellowships, and veterans' benefits. Defendants Memorandum Brief in Support of Motion to Dismiss and Motion for Summary Judgment, at 5. [Emphasis and parenthetical material in original.]

So interpreted, defendants argue, the regulation leaves no room for deduction of travel allowances, notwithstanding the fact that such allowances are made available to the plaintiffs by educational grants. Thus, defendants conclude, the provision in the Employees' Manual denying deductions for travel allowances is nothing more than state effectuation of the Department of Agriculture's



own regulation. Accordingly, if the federal regulation is valid, the state regulation, too, must be upheld.<sup>2</sup>

The Court need not consider the validity of the federal regulation in order to invalidate the state's, however, for we feel that the defendants read § 271.3(c) (1) (iii) (e) too narrowly. In view of the congressional declaration of policy quoted above and echoed by the Department of Agriculture in 7 C.F.R. § 270.1, a more reasonable interpretation of subsection (e), and the one adopted by this Court, is that the phrase "such expenses" refers not to "tuition and mandatory school fees", but to the general classification "educational expenses". So construed, the subsection may be read as allowing deduction of educational expenses including educational expenses which are covered by scholarships, educational grants, etc. This reading is far more nearly in accord with the purposes of the food stamp program in that it allows a deduction for an item of income, the travel allowance, which has no effect on food purchasing power. Accordingly, the Court is of the opinion that it is against this broader reading of subsection (e) that Item *d* must be judged.

Since the parties agree that the travel allowances are provided by educational grants, the Court concludes, on the basis of the above analysis, that Item *d* is inconsistent with, and thus invalidated by, subsection (e). Therefore, the Court holds that defendants should be enjoined from denying deductability for travel allowances forthwith.

Having determined that plaintiffs' claim is meritorious, there remain but two items to dispose of. Pursuant to defendants' contention that the Department of Agriculture was an indispensable party to this action, plaintiffs attempted to join it. That attempt was faulty, however, and the Department has resisted it. Since our

<sup>2</sup> At oral argument counsel for the defendants went even further, claiming that since the Department of Agriculture had approved the Employees' Manual, the provision denying deductability was not only consonant with, but mandated by, the Department's interpretation of the Food Stamp Act. Counsel has since retreated from his position and it is no longer seriously pressed.

decision does not involve a determination of the validity of any actions taken by the Department or any of its employees, neither the Secretary of Agriculture nor the Department need be a party herein, and the Department's notice to dismiss as to it should be granted.

Finally, the Court notes that plaintiffs' complaint includes a prayer for damages. The issue of damages was not discussed at oral argument or in the briefs of any of the parties, however, and no evidence has been introduced which would enable the Court to do anything but surmise the proper measure of a monetary award, should such an award be proper. Since plaintiffs' failure to address this issue raises some doubt about whether they seriously press the claim for monetary relief for the names plaintiff or the class she represents, the Court is of the opinion that the plaintiffs should be given two weeks from the date this order is signed in which to give the Court some indication of the status of their damage claim. In the event that plaintiffs do *not* respond within said period, the Court will consider the matter of damages closed and apply injunctive relief prospectively only.

We therefore conclude that defendants, their successors in office, their agents and employees, and all other persons in active concert and participation with them should be permanently enjoined from including in the "Monthly Net Income" of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's Monthly Net Income in determining such person's Adjusted Net Income. We conclude further that defendants should promptly recompute the adjusted net income for each person who is presently participating in the food stamp program and who has been paying a wrongfully high price for his food stamp allotment because his adjusted net income has been improperly computed in the particulars set forth above, and charge such person the lesser amount figured in compliance herewith for the next purchase of food stamps and each subsequent purchase thereof so long as such person re-

ceives such a reimbursement for necessary commuting expenses.

Finally, all motions still pending whereby plaintiffs have attempted to add either the Department of Agriculture or the Secretary of Agriculture or both as parties to this action be and the same hereby are denied.

The costs of this action be and hereby are taxed to defendants.

An appropriate Order will issue forthwith.

[3-5-74—Copies to Attys.—Copies to 3-Judge Court]

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

Civil No. 73-240-1

[Filed, Mar. 4, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services, et al., DEFENDANTS

MEMORANDUM ORDER

Before STEPHENSON, Circuit Judge HANSON, Chief District Judge, and STUART, District Judge.

PER CURIAM.

In accordance with the Memorandum Opinion filed in the above matter on the 4 day of March, 1974,

IT IS HEREBY ORDERED that defendants, their successors in office, their agents and employees, and all other persons in active concert and participation with them should be permanently enjoined from including in the "Monthly Net Income" of any person receiving same, any amount received by such person as reimbursement for necessary commuting expenses pursuant to an Individual Education and Training Plan, unless such amount is deducted from such person's monthly net income in determining such person's adjusted net income.

IT IS FURTHER ORDERED that defendants should promptly recompute the adjusted net income for each person who is presently participating in the food stamp program and who has been paying a wrongfully high



price for his food stamp allotment because his adjusted net income has been improperly computed in the particulars set forth above, and charge such person the lesser amount figured in compliance herewith for the next purchase of food stamps and each subsequent purchase thereof so long as such person receives such reimbursement for necessary commuting expenses.

IT IS FURTHER ORDERED that all motions still pending whereby plaintiffs have attempted to add either the Department of Agriculture or the Secretary of Agriculture or both as parties to this action be and the same hereby are denied.

IT IS FURTHER ORDERED that the costs of this action be and hereby are taxed to defendants.

IT IS FURTHER ORDERED that the Clerk of the Court issue a writ of permanent injunction in accordance herewith.

/s/ Roy L. Stephenson  
ROY L. STEPHENSON,  
Circuit Judge

/s/ William C. Hanson  
WILLIAM C. HANSON,  
Chief District Judge

/s/ William C. Stuart  
WILLIAM C. STUART,  
District Judge

(470J63)

[3-5-74: Copies to attys., copies to 3-Judge Court]

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

Civil No. 73-240-1

[Filed, Mar. 6, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other persons similarly situated, PLAINTIFF

vs.

KEVIN J. BURNS, Individually and in his capacity as Commissioner of Social Services, et al., DEFENDANTS

JUDGMENT

This action came on for trial before the Court, Honorable Roy L. Stephenson, Circuit Judge, Honorable William C. Hanson Chief District Judge, Southern District of Iowa, and Honorable William C. Stuart, District Judge, Southern District of Iowa, presiding, and the issues having been duly tried and a decision having been duly rendered,

IT IS ORDERED AND ADJUDGED, that defendants shall promptly recompute the adjusted net income for each person who is presently participating in the food stamp program and who has been paying a wrongfully high price for his food stamp allotment because his adjusted net income has been improperly computed, and charge such person the lesser amount figured in compliance herewith for the next purchase of food stamps and each subsequent purchase thereof so long as such person receives such reimbursement for necessary commuting expenses.

IT IS FURTHER ORDERED AND ADJUDGED that all motions still pending whereby plaintiffs have attempted to add either the Department of Agriculture or



the Secretary of Agriculture or both as parties to this action are denied.

IT IS FURTHER ORDERED AND ADJUDGED that the Clerk of the Court shall issue a writ of permanent injunction as ordered in the "Memorandum and Order," filed March 4, 1974, in this action.

IT IS FURTHER ORDERED AND ADJUDGED that the costs of this action are taxed to defendants, and that the action stands dismissed.

Dated this 6th day of March, 1974.

/s/ R. E. Longstaff  
R. E. LONGSTAFF  
Clerk-Magistrate  
U. S. District Court  
Southern District of Iowa

(470J66)

[3-6-74: Copies to attys., copies to 3-Judge Court]

# SUPREME COURT OF THE UNITED STATES

No. 73-1882

[Filed, Dec. 12, 1974, R. E. Longstaff, Clerk, U.S. District Court, Southern District of Iowa]

KEVIN J. BURNS, ETC., ET AL., APPELLANTS

v.

KAREN HEIN, ETC.

APPEAL FROM the United States District Court for the Southern District of Iowa.

THIS CAUSE having been submitted on the statement of jurisdiction and motion to affirm,

ON CONSIDERATION WHEREOF, it is ordered and adjudged by this Court that the judgment of the said United States District Court in this cause be, and the same is hereby, vacated, and that this cause be, and the same is hereby, remanded to the United States District Court for the Southern District of Iowa for reconsideration in light of the revision of the regulations of the Department of Agriculture. (See 7 C.F.R. § 271.3 (c) (1) (iii) (f)).

November 11, 1974

A true copy MICHAEL RODAK, JR.

Test:

Clerk of the Supreme Court of the United States  
Certified this ninth day of December, 1974

By /s/ Julian S. Garza, Deputy

[12-12-74: Copies to attys., copies to 3-Judge Court]

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF IOWA  
CENTRAL DIVISION

Civil No. 73-240-1

[Filed Jan. 9, 1975, R. E. Longstaff, Clerk, U. S.  
District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other  
persons similarly situated, PLAINTIFF

v.

KEVIN J. BURNS, Individually and in his capacity as  
Commissioner of Social Services, et al., DEFENDANTS

MOTION TO JOIN PARTY DEFENDANT; MOTION  
FOR LEAVE TO AMEND COMPLAINT

COMES NOW the Plaintiff, by and through her attorney, and moves this Court, pursuant to Rules 15(a) and 20(a), F.R.C.P., (1) for an Order joining as a party defendant herein the Secretary of the United States Department of Agriculture, Earl Butz; and (2) for leave to amend the Complaint herein, as set forth in the attached Second Amendment to Complaint, to add the Secretary of Agriculture as a party defendant. In support of these motions, Plaintiff states as follows:

1. Although the present state Defendants are charged by 7 U.S.C. § 2019(b) with determining eligibility of households for food stamp assistance and are responsible for administering the Food Stamp Program at the local level, general supervision of the Program on the national level is the responsibility of the United States Secretary of Agriculture. (7 U.S.C. § 2019.)

2. On July 15, 1974, while this case was on appeal to the U.S. Supreme Court, 7 CFR § 271.3(c)(1)(iii)(e) was amended by the Department of Agriculture to conform to the Iowa Department of Social Services *Employees' Manual* VII-3-16-d.

3. On November 11, 1974, the United States Supreme Court vacated and remanded the decision of this Court herein "for reconsideration in light of the revision of the regulations of the Department of Agriculture. (See 7 C.F.R. § 271.3(c)(1)(iii)(f).)" Since the decision of this Court of March 4, 1974, was based on the Food Stamp Act, and not on federal regulations, the issue to be reconsidered on remand apparently is the indispensability of the Secretary of Agriculture under F.R.C.P. 19.

4. Although Plaintiff still does not believe that the Secretary of Agriculture is an indispensable party herein, joinder of the Secretary will eliminate this issue and thereby promote efficient resolution of this case.

5. Venue of this action properly lies in this Court under 28 U.S.C. § 1391(e) (see Plaintiff's Supplemental Brief of February 4, 1974, Part III).

WHEREFORE, Plaintiff prays that this Court:

A. Order that the Secretary of Agriculture, Earl Butz, be joined as a party defendant in this action;

B. Grant Plaintiff leave to amend her Complaint to add the Secretary of Agriculture as a defendant.

Respectfully submitted,

/s/ Robert Bartels  
ROBERT BARTELS

/s/ Susan Bolton  
SUSAN BOLTON  
Legal Intern

University of Iowa  
College of Law  
Iowa City, Iowa 52242  
(319) 353-4031

# CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Iowa City, Iowa on the 7th day of January, 1975.

/s/ Robert Bartels

# IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

Civil No. 73-240-1

[Filed Jan. 10, 1975, R. E. Longstaff, Clerk, U.S.  
District Court, Southern District of Iowa]

KAREN HEIN, Individually and on behalf of all other  
persons similarly situated, PLAINTIFF

v.

KEVIN J. BURNS, Individually and in his capacity as  
Commissioner of Social Services, et al., DEFENDANTS

# SECOND AMENDMENT TO COMPLAINT

COMES NOW the Plaintiff, subject to leave of the Court, and amends her Complaint as follows:

1. By adding to the caption, as a party defendant, "EARL BUTZ, in his capacity as Secretary of the United States Department of Agriculture."

2. By adding to Paragraph 12 of the Complaint the following sentence: "Defendant Earl Butz is the Secretary of the United States Department of Agriculture, and as such is responsible for promulgating national standards and procedures for the administration of the Food Stamp Act (7 U.S.C. § 2019)."

3. By adding to Part VI of the Complaint ("*Facts*") the following paragraph:

"20. On July 15, 1974, the Secretary of Agriculture amended the federal regulations governing the Food Stamp Program so that said regulations explicitly conformed with Iowa State Department of Social Services Manual VII-3-16-d (7 C.F.R. § 271.3(c) (1) (iii) (f))."



4. By striking paragraph 20 of the original Complaint.

Respectfully submitted,

/s/ Robert Bartels  
Robert Bartels

/s/ Susan Bolton  
Susan Bolton  
Legal Intern

University of Iowa  
College of Law  
Iowa City, Iowa 52242  
(319) 353-4031

#### CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true copy of the foregoing instrument was served upon each of the attorneys of record of all parties to the above-entitled cause by enclosing the same in an envelope addressed to each such attorney at his respective address as disclosed by the pleadings of record herein, with postage fully paid, and by depositing said envelope in a United States Post Office depository in Iowa City, Iowa on the 7th day of January, 1975.

/s/ Robert Bartels

#### SUPREME COURT OF THE UNITED STATES

No. 75-1261

EARL L. BUTZ, Secretary of Agriculture, APPELLANT

v.

KAREN HEIN, et al.

APPEAL from the United States District Court for the Southern District of Iowa.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is consolidated with No. 75-1355 and a total of one hour is allotted for oral argument.

June 1, 1976

#### SUPREME COURT OF THE UNITED STATES

No. 75-1355

KEVIN J. BURNS, etc., et al., APPELLANTS

v.

KAREN HEIN, et al.

APPEAL from the United States District Court for the Southern District of Iowa.

The statement of jurisdiction in this case having been submitted and considered by the Court, probable jurisdiction is noted. The case is consolidated with No. 75-1261 and a total of one hour is allotted for oral argument.

June 1, 1976